

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Cain	
Application No.: 09/455955	Group Art Unit: 2663
Filed: 12/7/1999	
Attorney Docket No.: 120-241	Conf. No. 5780
	Examiner: Duong

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO WITHDRAW HOLDING OF ABANDONMENT
PURSUANT TO 37 CFR 1.181(a)

Dear Sir:

In response to the Notice of Abandonment mailed March 21, 2006, Applicant respectfully petitions the Commissioner for withdrawal of the holding of abandonment.

STATEMENT OF FACTS:

On September 24, 2003, Final Office Action was issued by United States Patent Office (USPTO).

On January 26, 2004, applicant's attorneys filed a response to Final Office Action.

On February 25, 2004, the USPTO issued an Advisory Action.

On March 23, 2004, applicant's attorneys filed a Notice of Appeal and paid the fee for an extension of time.

On July 27, 2004, applicant's attorneys filed an Appeal Brief.

On December 2, 2007 the Examiner called Applicant's attorneys and requested that an amendment be filed which would correctly show the state of the claims under appeal. This

amendment was filed via fax and a PTO confirmation receipt was received. However, this document does not show in PAIR. A copy is enclosed for your convenience.

Applicant now recognizes that the Examiner should have issued a notice of non-compliant brief, rather than phone Applicant to request the claims.

On March 21, 2006 the USPTO issued a Notice of Abandonment. Applicant's attorneys failed to receive the Notice of Abandonment but noticed the abandonment of the application through a periodic review of active file status in PAIR. Upon detection of the abandonment status, Applicant has diligently filed this petition to withdraw the holding of abandonment. Applicants have included with this petition a report of the present case as viewed by our docket system, which clearly shows that we believe the case to be pending, as evidence of our failure to receive the notice of abandonment.

The Notice of Abandonment was for failure to respond to an office action; however PAIR clearly shows that an appeal brief and fee were filed within the specified date.

POINT TO BE REVIEWED: Applicant hereby petitions the Commissioner for withdrawal of the holding of abandonment for at least the reason that the Applicant had filed a timely response in the form of an appeal brief. Applicant believes that the duty then was on the Examiner to either file a notice of non-compliant brief, or alternatively an answer to Applicant's appeal brief.

REQUESTED ACTION: A notice of the withdrawal of holding of abandonment and entry of the amendment filed December 2, 2004 is respectfully requested, or alternatively a notice of non-compliant appeal brief and an opportunity to cure is requested.

Authorization is granted by Applicant to charge Applicant's deposit account 502569 for any fee due for this petition.

Respectfully Submitted,

7/19/2007
Date

/Lindsay G. McGuinness/
Lindsay G. McGuinness, Reg. No. 38549
Attorney/Agent for Applicant(s)
McGuinness & Manaras LLP
125 Nagog Park
Acton, MA 01720
(978) 264-6664